

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

No. 317.

THE DAY-BRITE LIGHTING, INC.,

Appellant, /

vs.

STATE OF MISSOURI.

Appeal from the Supreme Court of the State of Missouri.

## **MOTION TO TRANSFER CAUSE FROM SUMMARY DOCKET TO REGULAR DOCKET.**

Comes now Day-Brite Lighting, Inc., appellant in the above-entitled cause, and respectfully moves this Honorable Court that the above-entitled cause be removed from the summary docket to the regular docket for argument, and for grounds for said motion appellant states and alleges as follows:

1. The case is of such a character that its adjudication is of widespread importance.

The constitutionality of the statute here under consideration is not merely of local interest in the State of Missouri. Some 16 states have practically similar statutes making it unlawful for an employer to deduct from an employee's wages during absence for voting purposes. The States are: Arizona, California, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, New York, Ohio, South Dakota, Texas, West Virginia and Wyoming. In addition, Colorado and Utah have similar statutes, except they do not apply to hourly paid employees. Six states authorize absence with no provision

for payment of wages. (See page 27, Statement as to jurisdiction.)

2. There is a conflict in state decisions on the constitutional questions involved here.

The Supreme Court of Illinois in *People v. Chicago, Milwaukee & St. Paul Railway Co.*, 306 Ill. 486, 138 N. E. 155, 28 A. L. R. 610, held a practically identical statute unconstitutional, both under the State and Federal constitutions.

The Court of Appeals of Kentucky in the case of *Illinois Central Railroad Co. v. the Commonwealth*, 305 Ky. 632, 204 S. W. (2) 973, held a similar statute unconstitutional under both the Federal and State constitutions. (See pages 27, 28, Statement as to Jurisdiction.)

*People v. The Ford Motor Co.*, 271 App. Div. 141, 63 N. Y. S. (2) 697, decided by the appellate division of the Supreme Court of New York, held a similar statute constitutional. (See page 49, Statement as to Jurisdiction.)

Two California cases have upheld a similar California statute. The exact question here raised was not involved, but the principal was the same. These cases are *Kouff v. Bethlehem-Alameda Shipyard, Inc.*, 202 Pac. (2) 1059, and *Ballarini v. Schlage Lock Co.*, 226 Pac. (2) 771. (See page 49, Statement as to Jurisdiction.)

The same questions were raised in these cases and great confusion exists, particularly in those States whose statutes have not been tested as to whether a statute such as the one here involved, or similar to the one here involved, is indeed a violation of the Federal constitution. This situation should be clarified and every opportunity should be extended to both the appellant and the appellee in the instant case to present their arguments to the fullest extent.

3. The decision of the Missouri Supreme Court in the instant case enunciates an unprecedented extension of the police power.

The Missouri Supreme Court recognizes that the legislation here involved would be unconstitutional as violative

of due process under both the State and Federal constitutions, unless its enactment is within the police power of the state. (See last paragraph, page 25, Statement as to Jurisdiction.) In its decision the Missouri Supreme Court discusses police power at considerable length, and finally upholds the statute's constitutionality as being proper because the political welfare of the people is involved. "If the economic and physical welfare of the citizenry is within the police power of the State, then political welfare merits its protection also." (See page 30, Statement as to Jurisdiction.) This foregoing excerpt from the opinion of the Supreme Court of Missouri marks a departure from the recognized and established tests of the validity of police power and merits a careful and exhaustive analysis by this Honorable Court. The fullest opportunity should be granted to both appellant and appellee to explore and clarify this issue.

In view of the foregoing, it is earnestly urged that this Honorable Court grant appellant's motion.

Respectfully submitted,

WILLIAM H. ARMSTRONG,

and

HENRY C. M. LAMKIN,

506 Olive Street,

St. Louis, Missouri,

Attorneys for Appellant.

Of Counsel:

LOUIS J. PORTNER,

506 Olive Street,

St. Louis, Missouri,

and

COBBS, BLAKE, ARMSTRONG,

TEASDALE & ROOS,

506 Olive Street,

St. Louis, Missouri.